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First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1044

BY JUDICIARY AND RULES COMMITTEE

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2	RELATING TO THE UNIFORM PROBATE CODE; AMENDING SECTION 15-3-715, IDAHO CODE,
3	TO REVISE TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES AND TO
4	MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-5-424, IDAHO CODE,
5	TO REVISE POWERS OF CONSERVATORS IN ADMINISTRATION AND TO MAKE TECHNI-
6	CAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 15-3-715, Idaho Code, be, and the same is hereby amended to read as follows:

- 15-3-715. TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES -- EXCEPTIONS. Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 15-3-902 of this code, a personal representative, acting reasonably for the benefit of the interested persons, may properly:
- (1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
 - (2) Receive assets from fiduciaries, or other sources;
- (3) Exercise the same power as the decedent in performance, compromise or refusal to perform the decedent's contracts which continue as obligations of the decedent's estate. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action may:
 - (a) eExecute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
 - (b) <u>dD</u>eliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- (4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
- (5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;
- (6) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop,

improve, exchange, partition, change the character of, or abandon an estate
asset;

- (7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;
- (8) Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;
- (9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
- (10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;
- (12) Vote stocks or other securities in person or by general or limited proxy;
- (13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
- (14) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
- (15) Insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;
- (16) Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
- (17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
- (18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
- (19) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (20) Allocate items of income or expense to either estate income or principal, as permitted or provided by law;
- (21) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

- (23) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;
- (24) Continue any unincorporated business or venture in which the decedent was engaged at the time of his death:
 - (a) $\pm \underline{I}$ n the same business form for a period of not more than four (4) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will \underline{r} :
 - (b) $\pm In$ the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or
 - (c) <u>tThroughout</u> the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;
- (25) Incorporate any business or venture in which the decedent was engaged at the time of his death;
- (26) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;
- (27) Satisfy and settle claims and distribute the estate as provided in this $code_{\boldsymbol{i}}$
- (28) Take control of, conduct, continue or terminate any accounts of the decedent on any social networking website, any microblogging or short message service website or any e-mail service website.
- SECTION 2. That Section 15-5-424, Idaho Code, be, and the same is hereby amended to read as follows:
- 15-5-424. POWERS OF CONSERVATOR IN ADMINISTRATION. (a1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 15-5-209 of this code until the minor attains the age of eighteen (18) years or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2 of this chapter.
- (b2) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.
- $(\underline{e3})$ A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to:
 - $(\underline{1a})$ eCollect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;
 - (2b) #Receive additions to the estate;

- (3c) eContinue or participate in the operation of any business or other enterprise;
- $(4\underline{d})$ aAcquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;
- $(\underline{5e})$ $\pm \underline{I}$ nvest and reinvest estate assets in accordance with subsection $(\underline{b}2)$ of this section;
- $(\frac{6}{1})$ dDeposit estate funds in a bank including a bank operated by the conservator;
- (7g) aAcquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (8h) mMake ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
- $(9\underline{i})$ <u>sSubdivide</u>, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;
- $(10\underline{j})$ eEnter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;
- (11k) eEnter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- $(\frac{121}{9})$ gGrant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;
- (13m) $\forall V$ ote a security, in person or by general or limited proxy;
- (14n) pPay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (150) sSell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- $(\underline{16p})$ $\underline{\text{hH}}$ old a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
- $(\frac{17q}{2})$ $\pm I$ nsure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
- (18r) bBorrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;
- (19s) pPay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise;

and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

- $(20\underline{t})$ <u>pP</u>ay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;
- $(21\underline{u})$ aAllocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (22v) pPay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;
- $(23\underline{w})$ eEmploy persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one (1) or more agents to perform any act of administration, whether or not discretionary;
- (24x) pProsecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and
- $(25\underline{y})$ eExecute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator; and
- (z) Take control of, conduct, continue or terminate any accounts of the decedent on any social networking website, any microblogging or short message service website or any e-mail service website.